

C.C.R.B CASE CLOSING FORM

Investigator assigned: Chanin		Team: 3	CCRB#: 9700474	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourtesy <input type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury
Date of incident: 8/22/96	Time of incident: 8:00 PM	Location of incident: § 87(2)(b)	Pct. of occurrence: 052	Date S.O.L. Expires: 2/22/98
Date reported: 2/12/97	Time reported: 1:36 PM	To whom/where/how reported: Walk-in to CCRB taken by Inv. Hatcliffe		
Complainant: § 87(2)(b)		Home address: § 87(2)(b)		
Victim(s): § 87(2)(b)		Home address: § 87(2)(b)		
Witness(es): § 87(2)(b) § 87(2)(b)		Home address: § 87(2)(b) § 87(2)(b)		
Subject officer(s) (include rank): PO Erick Acevedo		Shield: 12656	Tax: 901082	Command: 052
Witness officer(s) (include rank): PO Edgar Padilla PO Mark Traumer PO Pamela Harris Lt. James J. Wenzel PO Ernest Perlmutter PO Joseph Mazzei PO John Hanlon PO Freddy Cruz		Shield: 18104 23323 09148 10275 00157 18328 17841	Tax: 895127 898656 892395 866546 904782 904491 904106 915528	Command: 052 052 052 050 052 SCU SCU 052
Allegation(s) by letter: A: PO Acevedo used excessive force when he pushed § 87(2)(b) out of the way when entering her house, in violation of PG-104-01 page 11. B: MOS employed excessive force when he hit § 87(2)(b) with a flashlight, in violation of PG-104-01, page 11. C: MOS used excessive force when he punched and kicked § 87(2)(b) in violation of PG-104-01, page 11. D: MOS used excessive force when he used a stun gun on § 87(2)(b) in violation of PG-104-01, page 11.				Recommendation(s): § 87(2)(g) § 87(2)(g) § 87(2)(g) § 87(2)(g)

Summary

On 08-22-96, a dispute developed between § 87(2)(b) and his stepfather, § 87(2)(b). The argument took place at their home at § 87(2)(b). § 87(2)(b) mother and § 87(2)(b) wife, § 87(2)(b) was also at home, as were her two younger daughters. § 87(2)(b) wanted § 87(2)(b) to leave the house but § 87(2)(b) refused to let her husband throw him out. When there was no resolution § 87(2)(b) called the police.

PO Padilla and PO Acevedo responded to the call. § 87(2)(b) met the officers downstairs, at the entrance to the apartment. He explained to the officers that he was a retired detective and told them of the situation upstairs. He and the officers proceeded upstairs. When the officers arrived at the apartment, § 87(2)(b) was standing by the front door. She informed the officers that this was her apartment and she did not want them to come inside. One of the officers pushed her out of the way and they both entered the apartment.

Once inside, the officers tried to deescalate the situation by separating the father and stepson. Despite the officers' efforts, § 87(2)(b) and § 87(2)(b) continued arguing. § 87(2)(b) eventually, grabbed his stepfather in a bear hug and would not let go. PO Acevedo and PO Padilla needed to pull § 87(2)(b) off his stepfather to restrain him. He would not let go and the officers struggled with him. § 87(2)(b) § 87(2)(b) sister, stated that § 87(2)(b) pulled away from the officers and punched § 87(2)(b) in the face (Encl. 17a). Having witnessed § 87(2)(b) attack on his stepfather, the officers decided they must arrest him (Encl. 23a and 25a).

They attempted to handcuff him but he continued struggling. They removed him to the back hallway of the apartment. The officers kept § 87(2)(b) and § 87(2)(b) at a distance and tried to contain § 87(2)(b) § 87(2)(b) was in the back hallway and witnessed some of the struggle with the officers. According to the family members, a younger child was also in the back of the apartment. § 87(2)(b) recalled yelling at the officers to watch out for his sister. The officers have no recollection of any children being in the apartment.

The exact series of events remains unclear but the officers and § 87(2)(b) struggled. At some point he was lying on the floor. It is likely that during the struggle § 87(2)(b) head hit the wall making a hole in it (Encl. 14). It is a very narrow hallway and the walls in the apartment are not strong. Additionally, § 87(2)(b) is 6 foot and 200 lbs. § 87(2)(b)

At some point during the struggle, one of the officers called for backup and within a few minutes assistance arrived. § 87(2)(g)

None of the officers identified on the radio run admitted to being in the apartment and assisting in the arrest. However, PO Acevedo and PO Padilla stated that they were assisted by other officers (Encl. 23a and 25a). PO Mazzei and PO Hanlon stated that they arrived and saw many officers inside. It appeared to them that everything was under control so they remained at the door and did not

enter. The other officers that were noted on the radio run had no recollection of entering the apartment or memory of the incident.

§ 87(2)(b) was handcuffed and taken to the precinct. There was some blood in the apartment after he left. His mother said "the stairs were covered with blood" and § 87(2)(b) stated: "§ 87(2)(b) was gushing blood from his forehead (Encl. 4a and 17a.)." However, the picture § 87(2)(b) submitted shows only one blood spot on the stairwell going out of the apartment (Encl. 14d). The officers have no recollection of seeing blood or any injuries to § 87(2)(b).

§ 87(2)(b) was charged with § 87(2)(b). PO Acevedo and PO Padilla turned the arrest over to PO Harris while they went to have their injuries treated. § 87(2)(b) stepfather decided not to press charges. However, the officers informed the Investigator that there was another incident on 04-10-97. This time the physical dispute between § 87(2)(b) and § 87(2)(b) was more serious and resulted in significant injury to the stepfather. Since the second incident, an order of protection has been issued to § 87(2)(b) from § 87(2)(b) no longer lives at home and is not permitted to return.

On § 87(2)(b), § 87(2)(b) pled guilty to the charges. § 87(2)(b)

The incident occurred on 08-22-97 but was not reported to CCRB until 02-12-97. § 87(2)(b)

§ 87(2)(g)

When the Investigator conducted the first photo array we waited a while until § 87(2)(b) arrived. During this conversation (which was not tape recorded), she told the Investigator of her efforts to get § 87(2)(b) into the armed forces and about other incidents with the officers. She stated that at times they follow § 87(2)(b) and make her feel uncomfortable when she is walking around the neighborhood. However, during the course of the conversation she never mentioned the second dispute between § 87(2)(b) and § 87(2)(b). Nor did she say why § 87(2)(b) was no longer living at home.

§ 87(2)(b), § 87(2)(g)

He never showed and therefore never did a photo array. § 87(2)(b) refused to do the photo array. § 87(2)(b) and § 87(2)(b) did submit to a photo array. Two photos were located after the first array. § 87(2)(b) did not look at these last two pictures.

§ 87(2)(b) submitted a note from a doctor describing her son's injuries. The doctor did not see § 87(2)(b) until 08-30-97, eight days after the incident. The note includes statements made by § 87(2)(b) about his interaction with the officers and a description of the injuries (Encl. 7). At the time of the incident, he had been seeing the neurologist on a regular basis for a possible spinal tumor. The doctor works at the § 87(2)(b), § 87(2)(b).

Analysis

A: PO Acevedo used excessive force when he pushed § 87(2)(b) out of the way when entering her house, in violation of PG-104-01 page 11.

PO Acevedo and PO Padilla arrived at § 87(2)(b)'s door. She explained that she was the owner of the apartment and § 87(2)(b) mother. She told the officers she did not want them to come into the apartment. In her initial interview, she stated that PO Acevedo pushed her "aside as if she was part of the door and worked his way into the house (Encl. 4)." During the photo array she identified PO Padilla as the one that pushed her out of the way and not PO Acevedo. Both of these officers arrived together and entered the apartment at the same time. § 87(2)(b) could not identify any of the officers as the ones that pushed her mother.

The officers stated that they did have a brief argument at the door with § 87(2)(b). However, neither of the officers admitted to pushing § 87(2)(b) aside in order to gain entrance to the apartment. § 87(2)(g)

§ 87(2)(b) The officers stated that just entered the apartment and there was no need for physical contact. All of the witnesses stated that § 87(2)(b) argued with the officers at the door. § 87(2)(g)

B: MOS employed excessive force when he hit § 87(2)(b) with a flashlight, in violation of PG-104-01, page 11.

All of the individuals involved in the incident said that one of the officers entered the apartment with a flashlight in his hand. The witness statements were unanimous in that the officer with the flashlight was neither PO Acevedo or PO Padilla. § 87(2)(b) stated that this officer entered the apartment with a flashlight in his hand. § 87(2)(b) saw the man raise the flashlight up and bring it down. He repeated this motion twice. However, he could not see if the officer actually struck § 87(2)(b) or not. § 87(2)(g)

§ 87(2)(b) He gave a description of the officer with the flashlight: Male, white, 6'3", 160 lbs., 25-28 with short black hair (Encl. 11). This is the only detailed description of the officer with the flashlight. § 87(2)(b) could only recall that the officer with the flashlight struck § 87(2)(b) with the flashlight was white. § 87(2)(b) and § 87(2)(b) could not give descriptions.

One officer matches the description that § 87(2)(b) provided. PO Mark Traumer is: Male, a Pacific Islander, DOB § 87(2)(b), 6'2" and 160 lbs. § 87(2)(b)

Although PO Traumer wrote that his race is Pacific Islander, his skin tone and features appear to be those of a white male.

§ 87(2)(b) refused to submit to the photo array and § 87(2)(b) could not be contacted. § 87(2)(b) and § 87(2)(b) were shown the photos. § 87(2)(b) did not pick any of the correct officers including PO Traumer. § 87(2)(b) was able to identify several of the officers. When shown the group of photos including PO Traumer's picture, she marked PO Traumer's picture and stated that he had features similar to the officer that had the flashlight (Encl. 15a and 16b). When she looked at the next set of photos she marked PO Hanlon and said that he looked similar to an officer that was in her house and he also might have had the flashlight (Encl. 15a and 16c). In both of these sets she marked the correct officers. Out of the eight arrays she viewed, § 87(2)(b) was able to narrow down the ones that might have had the flashlight to two officers. One of the two she chose, PO Traumer, matches the description given by § 87(2)(b) of the officer with the flashlight. § 87(2)(g)

The radio run shows that sector E, PO Traumer's sector, was at the scene from 2026 to 2033. His memo book indicates that he was there from 2025 to 2031. PO Traumer has no recollection of responding to an incident that he was at for at least 6 minutes. His partner's memo book also indicated that he was 10-85 at the address for the same time period. § 87(2)(g)

§ 87(2)(b) gave a description that almost entirely matches PO Traumer's features. Out of eight officers, § 87(2)(b) marked PO Traumer and said he might be the one that hit § 87(2)(b) with the flashlight. § 87(2)(g)

C: MOS used excessive force when he punched and kicked § 87(2)(b) in violation of PG-104-01, page 11.

It is alleged that during the struggle § 87(2)(b) was kicked and punched. None of the individuals involved could describe the officers that did this. § 87(2)(g)

D: MOS used excessive force when he used a stun gun on § 87(2)(b) in violation of PG-104-01, page 11.

§ 87(2)(b) § 87(2)(b) and § 87(2)(b) all said that some sort of instrument was used that stunned § 87(2)(b) and caused him to go limp. § 87(2)(b) stated that the instrument looked like her father's gun and sounded like an electronic stapler (Encl. 17a). § 87(2)(b) denied seeing a stun gun used or anything else that had the effects described by the family members. No one could describe the officer that used this implement. Neither the taser nor the stun gun matches the description given by § 87(2)(b) of what she saw.

According to Lt. Murphy, the only person authorized to carry such a weapon is the supervisor. Lt. Wenzel was asked if he used any such instrument during this arrest and he denied it. He stated that he has only used such a weapon in training and did not use it during this incident. PO Cruz, the Lt.'s operator, did not see the Lt. with a stun gun or a taser gun. PO Padilla and PO Acevedo did not see this used. None of the officers admitted to using or seeing such an implement. § 87(2)(g)

Investigator:	<u>Rachel Chanin</u>	Date:	<u>12-04-97</u>
Supervisor:	<u>Cellie Holloway</u>	Date:	<u>12/4/97</u>
Reviewed by:	_____	Date:	_____
Reviewed by:	_____	Date:	_____